



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR96-1612

Dear Ms. Joseph:

You ask that we reconsider the portion of our decision in Open Records Letter No. 96-0868 (1996) that concluded that the comptroller's private letter rulings are not made confidential by sections 111.006 or 151.027 of the Tax Code and must be released without de-identifying the taxpayers' identities. Your request was assigned ID# 100484.

You have provided us new information concerning these private letter rulings. Given that information, we now overrule Open Records Letter No. 96-0868 (1996).

Section 111.006(a)(2) deems confidential "all information secured, derived, or obtained by the comptroller during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, profits, losses, and expenditures of the taxpayer." Section 151.027 deems confidential "information in or derived from a record, report, or other instrument required to be furnished under [Tax Code chapter 151, The Limited Sales, Excise, and Use Tax Act]" and "[i]nformation secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer." Tax Code § 151.027 (a), (b). Open Records Letter No. 96-0868 (1996) found that these provisions do not apply to the comptroller's private rulings because we believed that "the information at issue was not obtained by an examination of a taxpayer's books, records, papers, officers, or employees, nor was it required to be furnished to the comptroller."

You now argue that the letter rulings do in fact contain confidential information about taxpayers' business affairs that the comptroller obtained through an examination.

You state that the comptroller's office considers the process by which it obtains the information from the taxpayer necessary to render private letter rulings to be an "examination" within the meaning of sections 111.006(a)(2) and 151.027(b). You observe that the term "examination" in the Tax Code confidentiality provisions is not defined in the Tax Code and argue that its scope is not limited to the formal audit process, but should also include the comptroller's garnering of information necessary to render private letter rulings. You explain that "to receive a private letter ruling (taxability response), a taxpayer writes to us stating specific facts about their business affairs whenever they are unsure how the tax laws would apply to them. The comptroller's tax policy division often contacts the requesting taxpayer by phone or by letter to obtain additional information about the taxpayer's business affairs." You say that "we may obtain the same kind of information in a letter asking for a taxability ruling that we would obtain if we audited the requesting taxpayer, namely how their business operations are treated under the Tax Code." Consequently, you urge that the information about the taxpayer's business affairs which the comptroller's tax policy division obtained from the taxpayers in the course of rendering private letter rulings is confidential under sections 111.006(a)(2) and 151.027(b).

We agree that these Tax Code confidentiality provisions protect information about a taxpayer's business affairs regardless of whether the comptroller obtained the information by auditing the taxpayer's business or by requesting information in order to render a private ruling. To conclude otherwise would thwart the legislative intent to protect information about taxpayers' businesses.

As we believe Tax Code sections 111.006(a)(2) and 151.027(b) apply to the private letter rulings, we conclude that the comptroller must withhold all information in the letter rulings that identifies the taxpayer pursuant to section 552.101 of the Government Code. In this way, we believe the business operations of a particular business are protected while the resolution of the tax question including the legal issues and related fact findings raised, are available to the public. Cf. Attorney General Decision H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code sections 111.006 and 151.027). Accordingly, we conclude that the comptroller must release the private letter rulings to the public but with deletions of all information that identifies a particular taxpayer.

You suggest that statutory law may deem the private letter rulings to be public information. Section 552.025 of the Government Code reads as follows:

- (a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.

(b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.

(c) Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

Subsection (c) states that a governmental body with taxing authority that issues rulings covered by section 552.025 shall make such rulings available to the public and that subchapter C of the Open Records Act, the chapter containing all of the exceptions to required public disclosure, does not authorize withholding such rulings from public disclosure. *See* Gov't Code § 552.025(b), (c). You state that "[w]e allow taxpayers to rely on advice given in a taxability response if the agency's position on a tax matter changes after the ruling is issued. We consider the taxability response one of our most effective means of ensuring voluntary compliance with the tax laws." You also inform us that the private letter rulings are indexed on the comptroller's Microfiche Tax Information System along with hearing decisions, court cases and attorney general opinions dealing with tax issues.

We believe the comptroller is a governmental authority with taxing authority. *See* Tax Code, title 2. We also believe a comptroller private letter ruling is a "written determination letter, technical advice memorandum, or ruling that concerns a tax matter." We conclude that section 552.025 applies to the private letter rulings at issue.

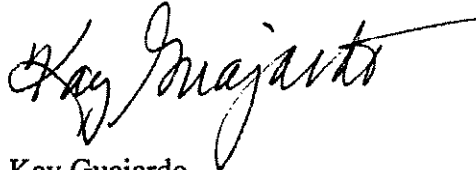
However, we do not believe we can construe subsection (c) of section 552.025 to mean that a governmental body may not withhold from the public a written determination letter, technical advice memorandum, or ruling that concerns a tax matter disclosure based on an exception in subchapter C of the Open Records Act. Subsection (c) derives from now-repealed V.T.C.S. article 6252-17a, section 6A. The legislature intended the codification of article 6252-17a to be nonsubstantive. *See* Act of May 22, 1993, 73rd Leg., R.S., ch. 268, § 47, 1993 Tex. Sess. Law Serv. 988. The meaning of subsection (c) differs from that of its predecessor provision. The predecessor provision reads as follows:

A written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority shall be indexed by subject matter by the governmental body. The index and the document itself shall be made available to the public upon request, subject to the provisions of Section 3 of [the Open Records] Act.

Act of June 16, 1991, 72nd Leg., R.S., ch. 705, § 41, 1991 Tex. Sess. Law Serv. 2530, *repealed by* Act of May 22, 1993, 73rd Leg., R.S., ch. 268, § 46, 1993 Tex. Sess. Law Serv. 988. Thus, while subsection (c) states that a governmental body may not withhold the tax rulings and opinions from public disclosure pursuant to an exception to disclosure in the Open Records Act, the import of the predecessor provision is that the tax rulings and opinions may be withheld from public disclosure pursuant to an Open Records Act exception. In conformity with the legislative intent, we construe section 552.025(c) consistent with its predecessor provision, repealed article 6252-17a, section 6A. *See City of La Porte v. Barfield*, 898 S.W.2d 288 (Tex. 1995); *Minton v. Perez*, 783 S.W.2d 803 (Tex. App.--San Antonio, 1990), *dismissed as moot* 841 S.W.2d 854 (Tex. 1992); Attorney General Opinion DM-206 (1993). Thus, we construe subsection (c) to mean that a governmental body may withhold from public disclosure tax rulings and opinions based on an applicable exception to disclosure in the Open Records Act.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100484

Enclosures: Submitted documents

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